

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
10/18/97	10/18/97	MURDOCH	10/18/97-1-MIS

2. MICHAEL
1280 UNIVERSITY AVENUE
VANCOUVER, B.C. V6B 5E6
CANADA

10/22/97

EXAMINER

WILSON, M

ART UNIT	PAPER NUMBER
10-200	9

AIR MAIL

DATE MAILED:

10/22/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/391,606	MURDIN ET AL.	
	Examiner Michael Wilson	Art Unit 1633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 07 September 1999.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) _____ is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims 1-23 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

18) Interview Summary (PTO-413) Paper No(s) _____.

19) Notice of Informal Patent Application (PTO-152)

20) Other: _____

Art Unit:

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1, 2, 4-7, 9-23, drawn to a composition comprising a first and second vector each of which encodes a *Chlamydia pneumoniae* protein, classified in class 424, subclass 320.1.
 - II. Claims 1, 3, 8, 13, 15, 17 and 19-23 drawn to a composition comprising a first and second vector each of which encodes a *Chlamydia trachomatis* protein, classified in class 424, subclass 320.1.

Although there are no provisions under the section for "Relationship of Inventions" in MPEP 806.05 for inventive groups that are directed to different related but distinct compositions, restriction is deemed to be proper because these compositions appear to constitute patentably distinct inventions for the following reasons:

Group I and II are patentably distinct because the composition of Group I is used to treat *Chlamydia pneumoniae* while the composition of Group II is used to treat *Chlamydia trachomatis*. While both pathogens are in the *Chlamydia* genus, the species of *pneumoniae* and *trachomatis* are patentably distinct because they have different effects *in vivo*. The composition of Group I is not required to treat *Chlamydia trachomatis* and the composition of Group II is not required to treat *Chlamydia pneumoniae*.

Art Unit:

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wilson whose telephone number is (703) 305-0120. The examiner can normally be reached on Monday through Friday from 8:30 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Clark, can be reached on (703) 305-4051. The fax phone number for this Group is (703) 308-8724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-0196.

Michael C. Wilson


AV 1633
MICHAEL C. WILSON
PATENT EXAMINER